

## Request for City Council Committee Action From the City Attorney's Office

Date:

August 9, 2013

To:

Minneapolis City Council

Referral to:

Subject:

Waiver of Conflict of Interest for Leonard, Street Deinard Law Firm

**Recommendation:** That the City Council consent to and waive any conflicts of interest between the City of Minneapolis and the Leonard Street Deinard Law Firm regarding its work as bond counsel for the City for the issuance of conduit bonds for multi-family housing revenue conduit financing for the HRB West Broadway Curve Project.

**Previous Directives:** 

Prepared by: WPeter W. Ginder

Phone: (612) 673-2478

Approved by:

Susan L. Segal City Attorney

Presenter in Committee:

Susan L. Segal, City Attorney

Financial Impact (Check those that apply)

No financial impact (If checked, go directly to Background/Supporting Information).

**Community Impact** 

Neighborhood Notification

City Goal(s):

## **Background/Supporting Information**

Leonard, Street an Deinard (the "Firm") has been selected by a conduit borrower to act as bond counsel for City-issued multi-family housing revenue bonds. City policy has permitted bond counsel to be selected by the conduit borrower (who also pays bond counsel's fees), but prohibits such counsel from acting as counsel to the conduit borrower or underwriter. Traditionally, the City has treated bond counsel as "counsel to the transaction". In its publication, *The Function and Professional Responsibilities of Bond Counsel (2011 Third Edition)*" the National Association of Bond Lawyers ("NABL") states:

Historically, many practitioners thought the objectivity required of bond counsel resulted in bond counsel being "counsel to the transaction" or counsel to the ultimate bondholders. \*\*\*

Due to the relationship of attorney and client and the methods of handling problems within that relationship as envisioned by the [ABA Model Rules of Professional Conduct, as amended as adopted in Minnesota as the Minnesota Rules of Professional Conduct, as amended], it is important that the client be an entity capable of receiving communications and, if necessary, giving consent and instructions. These inherently practical considerations require that the client of bond counsel not be simply "the transaction" or "all future bondholders." Bond counsel should instead identify a client from among the various parties to the transaction.

Early in the history of conduit bond financings, the responsibilities of conduit issuers were very limited. In the current regulatory framework, however, the responsibilities are much more extensive. In light of the changing professional responsibilities for law firms and the increased obligations of conduit issuers, bond counsel should no longer represent the "transaction" but should represent a client from among the underwriter, borrower or issuer. In

light of current City practice and, more importantly, in light of the changing ethical obligations and the increased obligations of the issuer, we think it is appropriate that bond counsel represent the City and owe its principal duty to the City. In this fashion the City interests will be represented by counsel in transactions in which it has legal and oversight responsibilities (even if the City has no direct pecuniary liability with respect to the conduit bonds).

Being otherwise qualified to act as bond counsel, we recommend that the Firm be authorized to represent the City in this conduit bond issuance. In addition, the Firm represents clients in matters in which it may have a conflict of interest with the City. While these representations are distinct and unrelated to the instant conduit bond issuance, the City Attorney's Office has determined that it would be appropriate to bring a conflict of interest waiver to the Council and recommends granting a waiver to the Firm in connection with the following matters:

Client	Type of Matter
Canadian Pacific Railway	Minneapolis Contaminated Sites Initiative
Roto-Rooter	2011 City of Minneapolis licensure issue
Canal Street Limited Partnership	Application to Register Title and in connection with the Gateway Parking Ramp
Ceresota Mill Limited Partnership	Parking rate arbitration
People Serving People	Advice re housing issues
Minnesota Timberwolves Basketball Limited Partnership	Sign permits
New French Bakery, Inc. and Peter Kelsey	Common Bond Fund Ioan
Arthur's Riverfront Properties	Moose on Monroe License Dispute
Augie's Cabaret,	In the matter of Augie's Cabaret v. the City
RPU, Inc.	City of Minneapolis watermain break
Mount Olivet Home	2011 refinancing
Hubbard Broadcasting, Inc.	In connection with Minneapolis Police Department Internal Affairs
The Ackerberg Group	Greenway Housing Development
LifeSource	In connection with the purchase of real estate
CenterPoint	Renewal of a City of Minneapolis franchise
BCL Investments	In connection with a Northeast Minneapolis triplex
Pawn America	Automated Pawn System
City Center Realty Partners v. County of Hennepin	Challenge to property taxes
Megabus, USA, LLC	City of Minneapolis land-use compliance